

# Therapy Focus

## Constitution of Therapy Focus Ltd.

A company limited by guarantee.

# Contents

<b>Preliminary .....</b>	<b>6</b>
1. Name of the company .....	6
2. Type of company .....	6
3. Limited liability of members .....	6
4. The guarantee .....	6
5. Definitions .....	6
<b>Charitable purposes and powers .....</b>	<b>6</b>
6. Objects .....	6
7. Powers .....	7
8. Not-for-profit .....	7
<b>Members .....</b>	<b>7</b>
9. Members .....	7
10. Membership and register of members .....	7
11. Who can be a member .....	8
12. How to apply to become a member .....	8
13. Entrance fee and subscriptions .....	8
14. Board decides whether to approve membership .....	8
15. When a person becomes a member .....	9
16. Membership entitlements not transferable .....	9
17. When a person stops being a member .....	9
<b>Dispute resolution and disciplinary procedures .....</b>	<b>10</b>
18. Dispute resolution .....	10
19. Disciplining members .....	11
20. Right of appeal of disciplined member .....	12
<b>General meetings of members .....</b>	<b>12</b>
21. General meetings called by the board .....	12
22. General meetings called by members .....	13
23. Annual general meeting .....	13
24. Notice of general meetings .....	14
25. Quorum at general meetings .....	15
26. Auditor's right to attend meetings .....	16

27.	Right of non-members to attend general meeting .....	16
28.	Using technology to hold meetings .....	16
29.	Chairperson for general meetings .....	16
30.	Role of the chairperson .....	17
31.	Adjournment of meetings .....	17
32.	Cancellation or postponement of general meeting .....	17
<b>Members' resolutions and statements.....</b>		<b>18</b>
33.	Members' resolutions and statements .....	18
34.	Company must give notice of proposed resolution or distribute statement .....	18
35.	Circular resolutions of members .....	19
<b>Voting at general meetings .....</b>		<b>19</b>
36.	How many votes a member has .....	19
37.	Challenge to member's right to vote .....	20
38.	How voting is carried out .....	20
39.	When and how a vote in writing must be held .....	20
40.	Persons of Unsound Mind and Minors.....	20
41.	Appointment of proxy .....	21
42.	Lodgement of Proxies .....	21
43.	Validity of Proxies .....	22
44.	Voting by proxy.....	22
45.	Rights of Proxies and Attorneys .....	23
<b>Directors .....</b>		<b>23</b>
46.	Number of directors .....	23
47.	[Deleted].....	23
48.	Eligibility of Director .....	23
49.	Election of directors .....	23
50.	Appointment of elected chairperson .....	24
51.	Term of elected chairperson .....	24
52.	Term of office .....	24
53.	General right to appoint and remove directors .....	25
54.	Alternate Directors .....	25
55.	When a director stops being a director.....	25
56.	Casual Vacancies.....	26
<b>Powers of board.....</b>		<b>26</b>
57.	Powers of board .....	26

58.	Delegation of Powers .....	27
59.	Establishment of board committees .....	27
60.	Payments to directors .....	28
61.	Execution of documents.....	29
<b>Duties of directors .....</b>		<b>29</b>
62.	Duties of directors .....	29
63.	Conflicts of interest .....	29
<b>Board meetings.....</b>		<b>31</b>
64.	When the board meets .....	31
65.	Calling board meetings.....	31
66.	Chairperson for board meetings .....	31
67.	Quorum at board meetings .....	32
68.	Using technology to hold board meetings .....	32
69.	Passing board resolutions.....	32
70.	Circular resolutions of the board.....	32
<b>Secretary .....</b>		<b>33</b>
71.	Appointment and role of secretary .....	33
<b>Validation of Acts of Directors .....</b>		<b>33</b>
72.	Acts of Directors .....	33
<b>Minutes and records .....</b>		<b>34</b>
73.	Minutes and records .....	34
74.	Financial and related records .....	35
<b>Notice .....</b>		<b>35</b>
75.	What is notice.....	35
76.	Notice to the company .....	35
77.	Notice to members.....	35
78.	When notice is taken to be given .....	36
<b>Financial year.....</b>		<b>37</b>
79.	Company's financial year.....	37
<b>Indemnity, insurance and access.....</b>		<b>37</b>

80.	Indemnity .....	37
81.	Insurance .....	37
82.	Indemnity to Continue .....	38
<b>Winding up .....</b>		<b>38</b>
83.	Surplus assets not to be distributed to members .....	38
84.	Distribution of surplus assets .....	38
<b>Definitions and interpretation .....</b>		<b>39</b>
85.	Definitions .....	39
86.	Reading this constitution with the Corporations Act .....	40
87.	Interpretation .....	41

## Preliminary

### 1. Name of the company

The name of the **company** is Therapy Focus Ltd (the **company**).

### 2. Type of company

The **company** is a not-for-profit public **company** limited by guarantee which is established to be, and to continue as, a charity.

### 3. Limited liability of members

The liability of **members** is limited to the amount of the guarantee in clause 4.

### 4. The guarantee

Each **member** must contribute an amount not more than \$10 (the guarantee) to the property of the **company** if the **company** is wound up while the **member** is a **member**, or within twelve (12) months after they stop being a **member**, and this contribution is required to pay for the:

- (a) debts and liabilities of the **company** incurred before the **member** stopped being a **member**; or
- (b) costs of winding up.

### 5. Definitions

In this **constitution**, words and phrases have the meanings set out in clauses 85 and 87.

## Charitable purposes and powers

### 6. Objects

The **company** is a charitable institution established to:

- (a) provide professional therapy and related services to people with disability and others in the community;
- (b) contribute to the evidence base of therapy interventions, including through practice and research;
- (c) deliver services with a commitment to quality and continuous improvement;
- (d) apply resources to, and advocate for, broader benevolent purposes, including the relief of distress, to contribute to a more inclusive and cohesive society;  
and
- (e) anything ancillary to the objects referred to in clauses 6(a) to 6(d).

## 7. Powers

Subject to clause 8, the **company** has the following powers, which may only be used to carry out its **objects** set out in clause 6:

- (a) the powers of an individual; and
- (b) all the powers of a **company** limited by guarantee under the **Corporations Act**.

## 8. Not-for-profit

- 8.1 The **company** must not distribute any income or assets directly or indirectly to its **members**, except as provided in clauses 8.2 and 83.
- 8.2 Clause 8.1 does not stop the **company** from doing the following things, provided they are done in good faith and otherwise in compliance with the terms of this constitution:
  - (a) paying a **member, or an entity related to a member or in which a member has a material interest**, for goods, assets or services they have provided to, or expenses they have properly incurred on behalf of, the company at fair and reasonable commercial rates, or rates more favourable to the **company than such rates**; or
  - (b) **paying a director remuneration for directorial services to the company provided that the provisions of clause 60.5 of this constitution have been complied with.**

# Members

## 9. Members

- 9.1 The **company's members** are those initial directors outlined in clause 46 and those members approved by the **board** (clause 14) unless the **member's membership** has ceased under clause 17, or the **member** has been expelled under clause 19.

## 10. Membership and register of members

- 10.1 The **company** must establish and maintain a **register**. The **register** must be kept by the **secretary** and must contain:
  - (a) for each current **member**:
    - (i) name;
    - (ii) address;
    - (iii) any alternative address nominated by the **member** for the service of notices;
    - (iv) date the **member** was entered on to the **register**; and
    - (v) in the case of a member which is not a natural person, the natural person that the member nominates to be the primary

- representative and contact of the member in its dealings with the company.
- (b) for each person who stopped being a **member** in the last seven (7) years:
    - (i) name;
    - (ii) address;
    - (iii) any alternative address nominated by the **member** for the service of notices; and
    - (iv) dates the **membership** started and ended.
- 10.2 The **company** must give current **members** access to the **register**.
- 10.3 Information that is accessed from the **register** must only be used in a manner relevant to the interests of the company and the rights of **members to hold the company and the board to account**.

## 11. Who can be a member

- 11.1 The **board** shall have discretion to admit to **membership** any person who:
- (a) supports the **objects** of the company;
  - (b) lodges an application form in accordance with clause 12;
- 11.2 In this clause, 'person' means an individual.

## 12. How to apply to become a member

- 12.1 A person (as defined in clause 11.2) may apply to become a **member** of the **company** by writing to the **secretary** stating that they:
- (a) want to become a **member** of the **company**;
  - (b) support the **objects** of the **company**; and
  - (c) agree to comply with the **company's constitution**, including paying the guarantee under clause 4 if required.

## 13. Entrance fee and subscriptions

- 13.1 There shall be an **entrance fee** and annual **subscription** payable by each **member** to the **company**.
- 13.2 Subject to clause 13.4, the amount of the **entrance fee** shall be \$10.00 and the amount of the annual **subscription** shall be \$10.00, or other such amount as determined by the **board** from time to time, and shall be payable by **members** at such times and in such manner as determined by the **board** from time to time.
- 13.3 The **board** may, in its discretion:
- (a) determine that no **entrance fee** or annual **subscription** is payable by a **member** or **members** (in whole or part) in a given year; and/or
  - (b) extend the time for payment of the **entrance fee** or annual **subscription** by any **member** or **members**.
- 13.4 No part of any **entrance fee** or **subscription** shall be refunded to a **member** who ceases to be a **member** in accordance with clause 17.

## 14. Board decides whether to approve membership



- 14.1 The **board** must consider an application for **membership** within a reasonable time after the **secretary** receives the application.
- 14.2 If the **board** approves an application, the **secretary** must as soon as possible:
  - (a) enter the new **member** on the **register**; and
  - (b) write to the applicant to tell them that their application was approved, and the date that their **membership** started (see clause 15).
- 14.3 If the **board** rejects an application, the **secretary** must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.
- 14.4 For the avoidance of doubt, the **board** may approve an application even if the application does not state the matters listed in clauses 12.1(a), 12.1(b) or 12.1(c). In that case, by applying to be a **member**, the applicant is deemed to agree to those three (3) matters.

## 15. When a person becomes a member

An applicant will become a **member** when they are entered on the **register**.

## 16. Membership entitlements not transferable

A right, privilege or obligation which a person has by reason of being a **member** of the **company**:

- (a) is not capable of being transferred or transmitted to another person or organisation; and
- (b) terminates on cessation of the person's **membership**.

## 17. When a person stops being a member

A person immediately stops being a **member** if:

- (a) they die, or are wound up or dissolved (as applicable);
- (b) they resign, by writing to the **secretary**;
- (c) they are expelled under clause 19;
- (d) they are convicted of an indictable offence;
- (e) they become bankrupt or insolvent or make an arrangement or composition with creditors of the **member's** joint or separate estate generally; or
- (f) the **company** in a general meeting resolves by **special resolution** to terminate the **membership** of a **member** whose conduct or circumstances, in the opinion of the **company**, renders it undesirable that that **member** continue to be a **member** of the **company**, in which case, the **member** must be given at least twenty one (21) days' notice of the proposed resolution, and must be given the opportunity to be heard at the meeting at which the resolution is proposed;

- (g) they fail to pay the **entrance fee** or annual **subscription** within three (3) months of when it becomes due and payable, subject to the provisions of clause 13.3; and
- (h) they have not responded within three (3) months to a written request from the **secretary** that they confirm in writing that they want to remain a **member**.

## Dispute resolution and disciplinary procedures

### 18. Dispute resolution

- 18.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this **constitution** between a **member** or **director** and:
  - (a) one or more **members**;
  - (b) one or more **directors**; or
  - (c) the **company**.
- 18.2 A **member** must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 19 until the disciplinary procedure is completed.
- 18.3 Those involved in the dispute must try to resolve it between themselves within fourteen (14) days of knowing about it.
- 18.4 If those involved in the dispute do not resolve it under clause 18.3, they must within ten (10) days:
  - (a) tell the **board** about the dispute in writing;
  - (b) agree or request that a mediator be appointed; and
  - (c) attempt in good faith to settle the dispute by mediation.
- 18.5 The mediator must:
  - (a) be chosen by agreement of those involved; or
  - (b) where those involved do not agree:
    - (i) for disputes between **members**, be a person chosen by the **board**; or
    - (ii) for other disputes, be a person chosen by either the Commissioner of the ACNC or the then current President of the Law Society of Western Australia Inc.
- 18.6 A mediator chosen by the **board** under clause 18.5(b)(i):
  - (a) may be a **member** or former **member** of the **company**;
  - (b) must not have a personal interest in the dispute; and
  - (c) must not be biased towards or against anyone involved in the dispute.
- 18.7 When conducting the mediation, the mediator must:
  - (a) allow those involved a reasonable chance to be heard;
  - (b) allow those involved a reasonable chance to review any written statements;
  - (c) ensure that those involved are given natural justice; and

- (d) not make a decision on the dispute.
- 18.8 The costs of the mediator appointed pursuant to clause 18.5 shall be shared equally between the persons party to the dispute, and the **company** shall not be liable for such costs unless it is a party.

## 19. Disciplining members

- 19.1 In accordance with this clause, the **board** may resolve to warn, suspend or expel a **member** from the **company** if the **board** considers that:
  - (a) the **member** has breached this **constitution**; or
  - (b) the **member's** behaviour is causing, has caused, or is likely to cause harm to the **company**.
- 19.2 At least fourteen (14) days before the **board** meeting at which a resolution under clause 19.1 will be considered, the **secretary** must notify the **member** in writing:
  - (a) that the **board** is considering a resolution to warn, suspend or expel the **member**;
  - (b) that this resolution will be considered at a **board** meeting and the date of that meeting;
  - (c) what the **member** is said to have done or not done;
  - (d) the nature of the resolution that has been proposed; and
  - (e) that the **member** may provide an explanation to the **board**, and details of how to do so.
- 19.3 Before the **board** passes any resolution under clause 19.1, the **member** must be given a chance to explain or defend themselves by:
  - (a) sending the **board** a written explanation before that **board** meeting; and/or
  - (b) speaking at the meeting.
- 19.4 After considering any explanation under clause 19.3, the **board** may:
  - (a) take no further action;
  - (b) warn the **member**;
  - (c) suspend the **member's** rights as a **member** for a period of no more than twelve (12) months;
  - (d) expel the **member**;
  - (e) refer the decision to an unbiased, independent person on conditions that the **board** considers appropriate (however, the person can only make a decision that the **board** could have made under this clause); or
  - (f) require the matter to be determined at a **general meeting**.
- 19.5 The **board** cannot fine a **member**.
- 19.6 The **secretary** must give written notice to the **member** of the decision under clause 19.4 as soon as possible.
- 19.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 19.8 There will be no liability of the company for any loss or injury suffered by the **member** as a result of any decision made in good faith under this clause and the relevant member releases the company accordingly.

## 20. Right of appeal of disciplined member

- 20.1 Upon the need arising, the **board** will establish a committee for the purpose of hearing any appeal with respect to a resolution of the board under clause 19.4 (**disciplinary committee**). The **disciplinary committee** will comprise of an independent panel of three (3) experts, all chosen by the **board**. The experts will be chosen based upon the nature of the matter the subject of the appeal. The **disciplinary committee** may seek advice from any relevant source.
- 20.2 A **member** may appeal to the **disciplinary committee** against a resolution of the **board**, under clause 19.4. Written notice of such an appeal must be lodged with the **secretary** within seven (7) days of service of the notice required under clause 19.6.
- 20.3 Within thirty five (35) days after receipt of a notice of appeal from the **member** pursuant to clause 20.2, the **disciplinary committee** must convene a meeting.
- 20.4 At the **disciplinary committee** meeting convened under clause 20.3:
- (a) the **member** must be given the opportunity to state their case orally or in writing, or both using any technology (reasonably available to the **board**) that gives the **member** a reasonable opportunity to do so; and
  - (b) the **disciplinary committee** must vote by ballot on the question of whether the resolution will be confirmed.
- 20.5 The **disciplinary committee's** decision, pursuant to clause 20.4(b) is final. The **member** is not entitled to appeal the decision of the **disciplinary committee**.
- 20.6 The **member** the subject of these disciplinary proceedings under clause 19 and 20 is entitled to:
- (a) subject to clause 20.6(b), bring a support person to any meeting with the **disciplinary committee** or the **board**, which meetings are being held pursuant to clauses 19 and/or 20; and
  - (b) if the support person is legally qualified, the **member** must notify the **disciplinary committee** or the **board** (as the case may be) at least five (5) business days before the meeting that the support person attending the meeting will be legally qualified.
- 20.7 Natural justice will be applied during every disciplinary process under clauses 19 and 20, requiring the **board** and **disciplinary committee** to act fairly, in good faith and without bias or conflict of interest when making its decision.

## General meetings of members

### 21. General meetings called by the board

- 21.1 The **board** may, whenever a majority of the **directors** thinks fit, convene a **general meeting** of the **company**.
- 21.2 In the event that the **company** is:

- (a) required to comply with the provisions of Part 2G.2 of the **Corporations Act** pertaining to the rights of **members** to call a **general meeting**, the:
    - (i) **members** may call a **general meeting** in accordance with clause 21.3; and
    - (ii) **company** will do so; in accordance with the requirements of those provisions; or
  - (b) not required to comply with the provisions of Part 2G.2 of the **Corporations Act** pertaining to the rights of **members** to call a **general meeting**, the:
    - (i) **members** may call a **general meeting** in accordance with clause 21.3; and
    - (ii) **company** will do so; in accordance with the requirements of those provisions notwithstanding section 111L of the **Corporations Act**.
- 21.3 In addition to the requirements in Part 2G.2 of the **Corporations Act**, the **members** who make the request for a **general meeting** must:
- (a) state in the request any resolution to be proposed at the meeting;
  - (b) sign the request; and
  - (c) give the request to the **company**.
- 21.4 Separate copies of a document setting out the request may be signed by **members** if the wording of the request is the same in each copy.

## 22. General meetings called by members

- 22.1 If the **board** does not call the meeting within twenty one (21) days of being requested under clause 21.2, 50% or more of the **members** who made the request may call and arrange to hold a **general meeting**.
- 22.2 To call and hold a meeting under clause 22.1 the **members** must:
- (a) as far as possible, follow the procedures for **general meetings** set out in this **constitution**;
  - (b) call the meeting using the list of **members** on the **company's register**, which the **company** must provide to the **members** making the request at no cost; and
  - (c) hold the **general meeting** within three (3) months after the request was given to the **company**.
- 22.3 The **company** must pay the **members** who request the **general meeting** any reasonable expenses they incur because the **board** did not call and hold the meeting.

## 23. Annual general meeting

- 23.1 In the event that the **company** is required to comply with section 250N of the **Corporations Act**, an **annual general meeting** of the **company** is to be held in accordance with the **Corporations Act**.

- 23.2 In the event that the **company** is not required to comply with the provisions of the Corporations Act pertaining to **annual general meetings**, the **board** may elect either to:
- (a) hold an **annual general meeting** and the **company** will convene and conduct **annual general meetings** in accordance with the provisions of the **Corporations Act** pertaining to **annual general meetings** notwithstanding section 111L of the **Corporations Act**; or
  - (b) hold no **annual general meeting**, but annually provide **members** with:
    - (i) an annual report, including financial information and achievements towards its purpose;
    - (ii) an opportunity to elect **directors**; and
    - (iii) an opportunity to ask questions, propose resolutions and to vote upon those resolutions.
- 23.3 Subject to clauses 23.1 and 23.2, where the **board** elects to hold an **annual general meeting**:
- (a) such meeting must be held:
    - (i) within eighteen (18) months after registration of the **company**; and
    - (ii) after the first **annual general meeting**, at least once in every calendar year.
  - (b) Even if these items are not set out in the notice of meeting, the business of an **annual general meeting** may include:
    - (i) a review of the **company's** activities;
    - (ii) a review of the **company's** finances;
    - (iii) any auditor's report;
    - (iv) the election of **directors**; and
    - (v) the appointment and payment of auditors, if any.
  - (c) Before or at the annual **general meeting**, the **board** must give information to the **members** on the **company's** activities and finances during the period since the last annual **general meeting**.
  - (d) The **chairperson** of the **annual general meeting** must give **members** as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the **company**.

## 24. Notice of general meetings

- 24.1 Notice of a **general meeting** must be given to:
- (a) each **member** entitled to vote at the meeting;
  - (b) each **director**; and
  - (c) the auditor (if any).
- 24.2 Notice of a **general meeting** must be provided in writing at least twenty one (21) days before the meeting.

- 24.3 Subject to clause 24.4, notice of a meeting may be provided less than twenty one (21) days before the meeting (notwithstanding the fact that section 111L of the **Corporations Act** may apply) if:
- (a) for an **annual general meeting**, all the **members** entitled to attend and vote at the **annual general meeting** agree beforehand; or
  - (b) for any other **general meeting**, **members** with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 24.4 Notice of a meeting cannot be provided less than twenty one (21) days before the meeting if a resolution will be moved to:
- (a) remove a **director**;
  - (b) appoint a **director** in order to replace a **director** who was removed; or
  - (c) remove an auditor.
- 24.5 Notice of a **general meeting** must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, or is to be held in full or partially as a virtual technology enabled meeting, the technology that will be used to facilitate this and how to access the same);
  - (b) the general nature of the meeting's business;
  - (c) if applicable, that a **special resolution** is to be proposed and the words of the proposed resolution;
  - (d) a statement that **members** have the right to appoint proxies and that, if a **member** appoints a proxy:
    - (i) the proxy does not need to be a **member** of the **company**;
    - (ii) the proxy form must be delivered to the **company** at its registered address or the address (including an electronic address) specified in the notice of the meeting; and
    - (iii) the proxy form must be delivered to the **company** at least 48 hours before the meeting (or such shorter period as the **board** may allow);
  - (e) any other information required by the **Corporations Act** (notwithstanding that section 111L of the **Corporations Act** may apply).
- 24.6 If a **general meeting** is adjourned for one month or more, the **members** must be given new notice of the resumed meeting.
- 24.7 The accidental omission to give notice of any **general meeting** to, or the non-receipt of notice of a meeting by, any person entitled to receive notice will not invalidate the proceedings at or any resolution passed at the meeting.

## 25. Quorum at general meetings

- 25.1 For a **general meeting** to be held, a majority of **members** (a quorum) on the register must be present (in person, by proxy or by attorney) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is an attorney or proxy of more than one **member**), and if a member has appointed more than one person who is present



at the meeting to be that member's proxy, then those proxy holders together count as one person only.

- 25.2 No business may be conducted at a **general meeting** if a quorum is not present.
- 25.3 If the meeting is convened upon the requisition of **members** and there is no quorum is present, the meeting shall be dissolved. In any other case, if there is no quorum present within thirty (30) minutes after the starting time stated in the notice of **general meeting**, the **general meeting** is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
- (a) if the date is not specified – the same day in the next week;
  - (b) if the time is not specified – the same time; and
  - (c) if the place is not specified – the same place.
- 25.4 If no quorum is present at the resumed meeting within thirty (30) minutes after the starting time set for that meeting, the meeting is cancelled.

## 26. Auditor's right to attend meetings

- 26.1 The auditor (if any) is entitled to attend any **general meeting** and to be heard by the **members** on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 26.2 The **company** must give the auditor (if any) any communications relating to the **general meeting** that a **member** of the **company** is entitled to receive.

## 27. Right of non-members to attend general meeting

The **elected chairperson** of a **general meeting** may invite any person who is not a **member** to attend and at the elected chairperson's discretion address a meeting.

## 28. Using technology to hold meetings

- 28.1 The **company** may hold a **general meeting** at two (2) or more venues using any technology that gives the **members** as a whole a reasonable opportunity to participate, including to hear and be heard.
- 28.2 Anyone using this technology is taken to be present in person at the meeting.

## 29. Chairperson for general meetings

- 29.1 The **elected chairperson** is entitled to chair **general meetings**.
- 29.2 The **members** present and entitled to vote at a **general meeting** may choose a **director** or **member** to be the chairperson for that meeting if:
- (a) there is no **elected chairperson**; or
  - (b) the **elected chairperson** is not present within thirty (30) minutes after the starting time set for the meeting; or
  - (c) the **elected chairperson** is present but unable or unwilling to act as chairperson of the meeting.



- 29.3 The rulings of the **chairperson** of a **general meeting** on all matters relating to the order of business, procedure and conduct of the meeting shall be final and no motion of dissent from such rulings shall be accepted.

### 30. Role of the chairperson

- 30.1 The chairperson is responsible for the conduct of the **general meeting**, and for this purpose must give **members** a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 30.2 The chairperson does not have a casting vote.

### 31. Adjournment of meetings

- 31.1 If a quorum is present, a **general meeting**:
- (a) must be adjourned if a majority of **members present** direct the chairperson to adjourn it; and
  - (b) may be adjourned by the chairperson, with the consent of the meeting,
- to a time and place as determined.
- 31.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.
- 31.3 A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

### 32. Cancellation or postponement of general meeting

- 32.1 Subject to:
- (a) those provisions of Part 2G.2 of the **Corporations Act** pertaining to **members** calling **general meetings** (notwithstanding that section 111L of the **Corporations Act** may apply); and
  - (b) this **constitution**;

the **board** may cancel a **general meeting** of the **company**:

- (c) convened by the **board**; or
  - (d) which has been convened by a **member** or **members** pursuant to clause 21.2 upon receipt by the **company** of a written notice withdrawing the requisition signed by that **member** or those **members**.
- 32.2 The **board** may postpone a **general meeting** or change the venue at which it is to be held. No business shall be transacted at any postponed meeting other than the business stated in the notice to the **members** relating to the original meeting.
- 32.3 Where any **general meeting** is cancelled or postponed or the venue for a **general meeting** is changed:
- (a) the **board** must endeavour to notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this

- constitution** and in the case of the postponement of a meeting, the new place, date and time for the meeting; and
- (b) any failure to notify in writing any person entitled to receive notice of the meeting, or failure of a person to receive a written notice, shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

## Members' resolutions and statements

### 33. Members' resolutions and statements

- 33.1 **Members** with at least 5% of the votes that may be cast on a resolution may give:
- (a) written notice to the **company** of a resolution they propose to move at a **general meeting (members' resolution)**; and/or
- (b) a written request to the **company** that the **company** give all of its **members** a statement about a proposed resolution or any other matter that may properly be considered at a **general meeting (members' statement)**.
- 33.2 A notice of a **members' resolution** must set out the wording of the proposed resolution and be signed by the **members** proposing the resolution.
- 33.3 A request to distribute a **members' statement** must set out the statement to be distributed and be signed by the **members** making the request.
- 33.4 Separate copies of a document setting out the notice or request may be signed by **members** if the wording is the same in each copy.
- 33.5 The percentage of votes that **members** have (as described in clause 33.1) is to be worked out as at midnight before the request or notice is given to the **company**.
- 33.6 If the **company** has been given notice of a **members' resolution** under clause 33.1(a), the resolution must be considered at the next **general meeting** held more than two (2) months after the notice is given.
- 33.7 This clause does not limit any other right that a **member** has to propose a resolution at a **general meeting**.

### 34. Company must give notice of proposed resolution or distribute statement

- 34.1 If the **company** has been given a notice or request under clause 33:
- (a) in time to send the notice of proposed **members' resolution** or a copy of the **members' statement** to **members** with a notice of meeting, it must do so at the **company's** cost; or
- (b) too late to send the notice of proposed **members' resolution** or a copy of the **members' statement** to **members** with a notice of meeting, then the **members** who proposed the resolution or made the request must pay the expenses reasonably incurred by the **company** in giving **members** notice of the proposed **members' resolution** or a copy of the **members' statement**.

However, at a **general meeting**, the **members** may pass a resolution that the **company** will pay these expenses.

- 34.2 The **company** does not need to send the notice of a proposed **members'** resolution or a copy of the **members'** statement to **members** if:
- it is more than 1, 000 words long;
  - the **board** considers it may be defamatory or otherwise at risk of breaching the law or its language is such to give rise to the risk of material offence being taken by persons and/or reputational damage to the company;
  - clause 34.1(b) applies, and the **members** who proposed the resolution or made the request have not paid the **company** enough money to cover the cost of sending the notice of the proposed **members'** resolution or a copy of the **members'** statement to **members**; or
  - in the case of a proposed **members'** resolution, the resolution does not relate to a matter that may be properly considered at a **general meeting** or is otherwise not a valid resolution able to be put to the **members**.

### 35. Circular resolutions of members

- 35.1 Subject to clause 35.2, the **board** may put a resolution to the **members** to pass a resolution without a **general meeting** being held (a circular resolution).
- 35.2 Circular resolutions cannot be used:
- for a resolution to remove an auditor or remove a **director**;
  - for a special resolution as required under the Corporations Act or this constitution or
  - where the **Corporations Act** or this **constitution** requires a meeting to be held.
- 35.3 A circular resolution is passed if more than 50% of **members** on the register sign or agree to the circular resolution, in the manner set out in clause 35.4.
- 35.4 **Members** may sign:
- a single document setting out the circular resolution and containing a statement that they agree to the resolution; or
  - separate copies of that document, as long as the wording is the same in each copy.
- 35.5 The **company** may send a circular resolution by electronic means to **members** and **members** may agree by sending a reply by electronic means to that effect, including the text of the resolution in their reply.

## Voting at general meetings

### 36. How many votes a member has

Each **member** has one (1) vote.

### 37. Challenge to member's right to vote

- 37.1 A **member** or the chairperson may only challenge a person's right to vote at a **general meeting** at that meeting.
- 37.2 If a challenge is made under clause 37.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

### 38. How voting is carried out

- 38.1 Voting must be conducted and decided by:
- (a) a show of hands;
  - (b) a vote in writing; or
  - (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 38.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 38.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 38.4 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

### 39. When and how a vote in writing must be held

- 39.1 A vote in writing may be demanded on any resolution instead of, or immediately after declaration of the outcome of, a vote by a show of hands by:
- (a) **members present** with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded); or
  - (b) the chairperson.
- 39.2 A vote in writing must be taken when and how the chairperson directs, unless clause 39.3 applies.
- 39.3 A vote in writing must be held immediately if it is demanded under clause 39.1:
- (a) for the election of a chairperson under clause 29.2; or
  - (b) to decide whether to adjourn the meeting.
- 39.4 A demand for a vote in writing may be withdrawn.

### 40. Persons of Unsound Mind and Minors

- 40.1 A **member**:
- (a) of unsound mind; or
  - (b) whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
  - (c) who is a minor;

may vote whether on a show of hands or a vote in writing by that **member's** committee or by such other person as properly has the management or guardianship of that

member's estate or by the public trustee (as the case may be) and the committee or other person or trustee may vote by proxy.

40.2 Any person having the right of management or guardianship of the person or estate in respect of a **member** as referred to in clause 40.1 must not exercise any of the rights conferred under that clause unless and until the person has provided to the **board** satisfactory evidence of the appointment of the person accordingly.

#### 41. Appointment of proxy

41.1 A **member** may appoint a proxy to attend and vote at a **general meeting** on their behalf.

41.2 A proxy does not need to be a **member**.

41.3 A proxy appointed to attend and vote for a **member** has the same rights as the **member** to:

- (a) speak at the meeting;
- (b) vote (but only to the extent authorised by the appointment); and
- (c) join in to demand a vote in writing under clause 39.1.

41.4 The instrument of proxy (proxy form) is valid if it contains the following information, or any additional information required by the **Corporations Act** (notwithstanding that section 111L may apply):

- (a) the **member's** name and address;
- (b) the **company's** name;
- (c) the proxy's name or the name of the office held by the proxy; and
- (d) the meeting(s) at which the appointment may be used.

41.5 A proxy appointment may be standing (ongoing). An instrument of proxy for a specified meeting is only valid for that meeting and any postponement or adjournment of that meeting.

41.6 The **board** may use its discretion to determine that an instrument of proxy is not to be treated as invalid merely because it does not specify all of the information required by clause 41.4.

#### 42. Lodgement of Proxies

42.1 An instrument appointing:

- (a) a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a certified copy of that power or authority; or
- (b) an attorney to exercise a **member's** voting rights at a **general meeting** or a certified copy of that power of attorney,

must be received by the **company** at the address stated in the notice under clause 24.5(d) or at the **company's** registered address at least 48 hours before a meeting (or such shorter period as the **board** may allow) before the time appointed for the holding of the meeting or adjourned meeting as the case may

be at which the person named in the instrument proposes to vote. In default, the instrument of proxy or the power of attorney will not be treated as valid.

- 42.2 For the purposes of this clause 42 it will be sufficient that any document required to be lodged by a **member** be received in legible form by electronic means if the notice of meeting so permits at the address and in the form specified in the notice and the proxy shall be regarded as received at the time of the receipt of the electronic transmission by the **company**.
- 42.3 A proxy does not have the authority to speak and vote for a **member** at a meeting while the **member** is at the meeting.

### 43. Validity of Proxies

- 43.1 Unless the **company** receives written notice before the start or resumption of a **general meeting** at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing **member**:
- (a) dies or is wound up or dissolved (as applicable);
  - (b) is mentally incapacitated;
  - (c) revokes the proxy's appointment;
  - (d) is bankrupt or insolvent;
  - (e) revokes the authority of a representative or agent who appointed the proxy, or any instrument under which the instrument or the power was granted;

if the **company** has not received at its **office** written notice of the death, unsoundness of mind, bankruptcy or revocation at least forty eight (48) hours (or such shorter period as the **board** may allow) prior to the time appointed for the holding of the **general meeting** or adjourned meeting, as the case may be, at which the instrument of proxy or the power of attorney is exercised.

- 43.2 A proxy who is not entitled to vote on a resolution as a **member** may vote as a proxy for another **member** who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.
- 43.3 A proxy appointment may specify the way the proxy must vote on a particular resolution.
- 43.4 An instrument of proxy may be revoked at any time by notice in writing to the **company**.

### 44. Voting by proxy

- 44.1 On a vote by a show of hands, if a person is a member and a proxy holder for another member or , or a proxy holder for 2 or more members, that person is entitled to only one (1) vote.
- 44.2 When a vote in writing is held, a proxy:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote;

- (b) if the way they must vote is specified on the proxy form, must vote that way; and
- (c) if the proxy is also a **member** or holds more than one proxy, may cast the votes held in different ways.

#### 45. Rights of Proxies and Attorneys

The chairperson of a **general meeting** may require any person acting as a proxy to establish to the satisfaction of the chairperson that he is the person nominated as proxy in the form of proxy lodged under this **constitution**. If the person is unable to establish his identity, he may be excluded from voting either upon a show of hands or upon a vote in writing.

## Directors

#### 46. Number of directors

- 46.1 The **company** must have at least three (3) and no more than nine (9) **directors**.
- 46.2 The **board** may by resolution vary the maximum number of **directors** holding office from that referred to in clause 46.1. If the board passes such a resolution, notice thereof with details of the variation will promptly be given to the members and this constitution annotated accordingly.

#### 47. [Deleted]

#### 48. Eligibility of Director

- 48.1 To be eligible to be a **director**, a person must:
  - (a) satisfy the conditions contained in subsection 45.20(3) of the **ACNC Regulation**;
  - (b) not be ineligible to be a **director** under the **Corporations Act** or the **ACNC Act**;
  - (c) be a **member** of the **company**; and
  - (d) give the **company** their signed consent to act as a **director** of the **company**.
- 48.2 In considering the appointment and election of directors, the board and the members should have due regard to the desired overall skill and experience base of the board in the context of the company's objects, strategies, operations and affairs..

#### 49. Election of directors

- 49.1 [Deleted]
- 49.2 The **members** elect **directors** by a resolution passed in a **general meeting**.

- 49.3 Subject to clause 49.9, each of the **directors** must be elected by a separate resolution, unless:
- (a) the **members** present have first passed a resolution that the election of the **directors** may be voted on together; and
  - (b) no votes were cast against that resolution.
- 49.4 Prior to the third **annual general meeting** (or third annual election pursuant to clause 23.2(b)(ii)) of the **company** after the adoption of this constitution and each **annual general meeting** (or annual election pursuant to clause 23.2(b)(ii)) thereafter, the **board** shall call for nominations for **directors**.
- 49.5 The nomination of any person as a candidate for election as a **director** must be:
- (a) in writing in the form prescribed by the **board** from time to time;
  - (b) accompanied by the written consent and signature of the candidate;
  - (c) made by a **member**; and
  - (d) lodged with the **secretary** at least seven (7) days before the **annual general meeting** (or annual election pursuant to clause 23.2(b)(ii)) at which the election is to take place (or any other scheduled **general meeting** (or annual election pursuant to clause 23.2(b)(ii))).
- 49.6 [Deleted].
- 49.7 [Deleted].
- 49.8 [Deleted].
- 49.9 If the number of nominations received for the election of directors exceeds the number of positions available to be filled, a ballot shall be held. The **board** shall determine the manner in which any such ballot will be conducted including to assure compliance with any relevant provisions of the Corporations Act.

## 50. Appointment of elected chairperson

The **board** shall, at the first meeting of the **board** where an **elected chairperson** has retired or vacated office, appoint from amongst the **directors**, a **director** as the **company's elected chairperson**.

## 51. Term of elected chairperson

- 51.1 Subject to clause 51.2, the **elected chairperson** shall hold the office of **elected chairperson** for a term of one (1) year, but shall be eligible for reappointment.
- 51.2 The **elected chairperson** shall not continue to hold office:
- (a) beyond his or her office as **director**; or
  - (b) if at any time the board resolves to terminate the elected chairperson's appointment to that office.

## 52. Term of office

- 52.1 At each **annual general meeting** (or annual election pursuant to clause 23.2(b)(ii)):



- (a) any **director** appointed by the **board** to fill a casual vacancy; and
  - (b) at least one-third of the remaining **directors** must retire.
- 52.2 The **directors** who must retire at each annual **general meeting** under clause 52.1(b) will be the **directors** who have been longest in office since last being elected. Where **directors** were elected on the same day, the **director(s)** to retire will be decided by lot unless they agree otherwise.
- 52.3 Other than a **director** appointed under clause 56, a **director's** designated term of office starts at the end of the **annual general meeting** (or annual election pursuant to clause 23.2(b)(ii)) at which they are elected and ends at the end of the **annual general meeting** (or annual election pursuant to clause 23.2(b)(ii)) at which they retire.
- 52.4 Each **director** must retire at least once every three (3) years.
- 52.5 A **director** who retires under clause 52.4 may nominate for election or re-election, subject to clause 52.6.
- 52.6 A **director** who has held office for a continuous period of nine (9) years or more may only be re-elected by a **special resolution** of the **members**.
- 52.7 No director may hold office for a continuous period of twelve (12) years or more.
- 52.8 For the purposes of this clause, an office will be deemed to be held for a continuous period unless not less than in aggregate a 3 year break in holding that office occurs during the relevant period.

### 53. General right to appoint and remove directors

- 53.1 The **board** may act despite any vacancy in their body but if the number falls below the minimum fixed in accordance with clause 46.1 the **board** may act:
- (a) for the purpose of:
    - (i) increasing the number of **directors** to the minimum; or
    - (ii) convening a **general meeting**; or
  - (b) in emergencies;

but for no other purpose.

### 54. Alternate Directors

Alternate **directors** shall not be permitted.

### 55. When a director stops being a director

A **director** stops being a **director** and is deemed to have formally resigned from office if they:

- (a) give written notice of resignation as a **director** to the **company**;
- (b) die;

- (c) are removed as a **director** by a resolution of the **members** in accordance with the **Corporations Act**;
- (d) stop being a **member** of the **company**;
- (e) are absent without leave of the **board** for:
  - (i) three (3) consecutive **board** meetings; or
  - (ii) any three (3) meetings within a financial year, not including committee meetings;
- (f) become bankrupt or make any arrangement or composition with creditors generally;
- (g) become prohibited from being a **director** of, or managing, a company by reason of any order made under the **Corporations Act**;
- (h) become of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health;
- (i) become ineligible to be a **director** of the **company** under the **Corporations Act** or the **ACNC Act**; or
- (j) have been disqualified by the ACNC Commissioner, at any time during the preceding twelve (12) months, from being a responsible entity of a registered entity under section 45.20(4) of the **ACNC Regulation**.

## 56. Casual Vacancies

- 56.1 Subject to the **Corporations Act**, in the event of any casual vacancy in the position of:
- (a) **elected chairperson** – the **board** may at any time appoint a **director** to fill that casual vacancy and the new **elected chairperson** shall hold office for the remaining term of the original vacating **elected chairperson**; or
  - (b) a **director** – the **board** may appoint a new **director** to fill that casual vacancy pursuant to clause 56.2 and the new **director** shall hold office until the next **annual general meeting** (or annual election pursuant to clause 23.2(b)(ii)).
- 56.2 The **directors** may appoint a person as a **director** to fill a casual vacancy who:
- (a) is a **member** of the **company**;
  - (b) gives the **company** their signed consent to act as a **director** of the **company**; and
  - (c) is not ineligible to be a **director** under the **Corporations Act** or the **ACNC Act**.

# Powers of board

## 57. Powers of board

- 57.1 The **board** is responsible for managing and directing the activities of the **company** to achieve the **objects** set out in clause 6.

- 57.2 The **board** may exercise all the powers of the **company** except for powers that, under the **Corporations Act** or this **constitution**, may only be exercised by **members**.
- 57.3 The **directors** must decide on the responsible management of the **company** including any delegations of authority under clause 58..
- 57.4 The **board** cannot remove a **director** or auditor. **Directors** and auditors may only be removed by a **members'** resolution at a **general meeting** in accordance with the **Corporations Act**.

## 58. Delegation of Powers

- 58.1 The **board** may from time to time, having regard to accepted prudential governance principles and practice for organisations like the company, resolve to delegate to such person, persons or committee(s) as the board may determine such of the powers exercisable under this **constitution** by the **board** as it may think fit for such time and to be exercised for such purposes and on such terms and conditions and with such restrictions as it may determine to be appropriate.
- 58.2 Powers delegated under this clause 58 may be exercised concurrently with the powers of the **board** in that regard and the **board** may from time to time withdraw, revoke or vary such delegation(s) or all or any of such powers delegated.

## 59. Establishment of board committees

- 59.1 The **board** may by resolution establish committees (consisting of such **directors** and other persons as it thinks fit) and determine the terms of reference and powers to be conferred on such committees. The **board** may from time to time revoke the establishment of any such committee or vary their terms of reference and/or powers so conferred.
- 59.2 A committee must in exercise of its terms of reference and powers conferred, conform to any directions and restrictions that may be imposed on it by the **board**.
- 59.3 The meetings and proceedings of any committee consisting of more than one person will be governed as near as is practicable by the provisions for regulating the meetings and proceedings of the **board** contained in this **constitution**.
- 59.4 A minute of all the proceedings and decisions of every committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the **board** are required by section 251A of the **Corporations Act** (notwithstanding the potential application of section 111L of the **Corporations Act**) and this **constitution** to be made entered and signed. A copy of these minutes shall be tabled at the next **board** meeting.
- 59.5 The delegation must be recorded in the **company's** minute book.

## 60. Payments to directors

- 60.1 Other than in compliance with the provisions of this clause the **company** must not remunerate or pay fees to a **director** for acting or providing services as a **director**.
- 60.2 The **company** may in accordance with clause 8.2(a):
- (a) pay a **director** for services they undertake for the **company**, other than as a **director**; or
  - (b) reimburse a **director** for expenses properly incurred by the **director** in connection with the affairs of the **company**.
- 60.3 Any payment made by the company to a director must be tabled in a timely manner at a board meeting for noting by the board..
- 60.4 The **company** may pay premiums for insurance indemnifying **directors**, as allowed for by law (including the **Corporations Act**) and this **constitution**.
- 60.5 The members may by special resolution (for the purposes of this clause “Remuneration Resolution”) authorise the payment of remuneration to directors for directorial services provided to the company in accordance with this clause 60.5:
- (a) The aggregate amount of remuneration (including any statutory superannuation payable by the company in respect thereof) payable to directors for any financial year (and pro rata for any part of a financial year) must not exceed an amount to be stipulated in the Remuneration Resolution (“Remuneration Pool”);
  - (b) Remuneration in aggregate not exceeding the Remuneration Pool may be awarded each financial year (or pro rata for any part of a financial year) amongst the directors in manner determined by the board;
  - (c) The board must report to the members in its annual financial and director reports and at annual general meetings the manner in which any remuneration to directors has been awarded and divided between the directors in compliance with this clause 60.5;
  - (d) A Remuneration Resolution may be revoked, or the Remuneration Pool may be varied (by way of increase or decrease) for any subsequent annual financial year by special resolution of the members;
  - (e) The board will seek to provide members with relevant data and information concerning any policy adopted by the board with respect to director remuneration and the manner of its sharing amongst directors to assist the members in their consideration of such matters;
  - (f) The amount of remuneration actually determined to be awarded by the board to directors under clause 60.5(b) need not be the full amount of the

Remuneration Pool and the amount of the Remuneration Pool determined in the Remuneration Resolution may exceed the amount likely to be so awarded so as to provide some “head-room” for future needs and inflationary pressures.

## 61. Execution of documents

- 61.1 The **company** may execute a document without using a common seal if the document is signed by:
- (a) two (2) **directors** of the **company**; or
  - (b) a **director** and the **secretary**.

# Duties of directors

## 62. Duties of directors

- 62.1 In accordance with Governance Standard 4 in section 45.20 of the **ACNC Regulation**, the **board** will take reasonable steps to ensure that the **board** does not at any time include a **director** who:
- (a) is disqualified; or
  - (b) has any reason to be disqualified;

from managing a corporation under the **Corporations Act** or from being a responsible entity under subsection 45.20(4) of the **ACNC Regulation**.

- 62.2 The **directors** must comply with their duties as **directors** under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the **ACNC Regulations** which are:
- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a **director** of the **company**;
  - (b) to act in good faith in the best interests of the **company** and to further the charitable **objects** of the **company** set out in clause 6;
  - (c) not to misuse their position as a **director**;
  - (d) not to misuse information they gain in their role as a **director**;
  - (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 63;
  - (f) to ensure that the financial affairs of the **company** are managed responsibly; and
  - (g) not to allow the **company** to operate while it is insolvent.

## 63. Conflicts of interest

- 63.1 Subject to compliance with any other relevant provisions in this constitution, the **company** may enter into contracts or arrangements with counterparties in which

- a **director** or a related person or entity of the director (including a director's spouse or close family member, or entity or trust in which a director or any of the foregoing have a financial or other interest) (together referred to in this clause as "Director/Related Person" ) has an interest, whether direct or indirect, provided it does so according to the usual commercial arms-length terms and conditions which apply to such contracts or arrangements, or on those terms and conditions which are more favourable to the company than those.
- 63.2 The interest of a **Director/Related Person under any such contract or arrangement referred to in clause 63.1** must be dealt with in accordance with subsection 45.25(2)(e) of the **ACNC Regulation**, which shall include disclosing an interest as soon as practicable after the relevant facts have come to that **director's** knowledge.
- 63.3 A **director** must disclose the nature and extent of any actual or perceived material conflict of interest of that Director/Related Person in a matter that is being considered at a meeting of **directors** (or that is proposed in a circular resolution):
- (a) to the other **directors**; or
  - (b) if all of the **directors** have the same conflict of interest, to the **members** at the next **general meeting**, or at an earlier time if reasonable to do so.
- 63.4 The disclosure of such a conflict of interest by a **director** must be recorded in the minutes of the meeting.
- 63.5 Each **director** who has a material Director/Related Person personal interest in a matter that is being considered at a meeting of **directors** (or that is proposed in a circular resolution) must, except as provided under clauses 63.6:
- (a) Absent themselves from the meeting while the matter is being deliberated upon; or
  - (b) Not vote on the matter.
- 63.6 A **director** may still be present and vote if:
- (a) their interest arises merely because they are a **member** of the **company**, in common with the other **members**;
  - (b) their interest relates to an insurance contract that insures, or would insure, the **director** against liabilities that the **director** incurs as a **director** of the **company** (see clause 81);
  - (c) their interest relates to a payment by the **company** under clauses 80, 81 and 82 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**;
  - (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the **director** to vote on the matter; or
  - (e) the **directors** who do not have a material Director/Related Person personal interest in the matter pass a resolution that:

- (i) identifies the **director**, the nature and extent of the **director's** interest in the matter and how it relates to the affairs of the company; and
  - (ii) says that those **directors** are satisfied that the interest should not stop the **director** from voting on the matter or being present while the matter is being deliberated upon.
- 63.7 The company secretary must maintain a register of matters disclosed by directors under clause 63.3.
- 63.8 For the purposes of clause 63.3, directors may make standing disclosures of Director/Related Person interests for recording in the register maintained under clause 63.7.

## Board meetings

### 64. When the board meets

The **board** may decide how often, where and when it meets. The **board** may adjourn and otherwise regulate its meetings and proceedings as it thinks fit.

### 65. Calling board meetings

- 65.1 A **director** may call a **board** meeting by giving reasonable notice to all of the other **directors**.
- 65.2 A **director** may give notice in writing or by any other means of communication that has previously been agreed to by all of the **directors**.
- 65.3 All resolutions of the **directors** passed at a meeting of **board** where a quorum is present but where notice of the meeting has not been given as required to each **director**, or any act carried out pursuant to such resolution, shall, provided each **director** to whom notice was not given subsequently agrees to waive the same, be as valid as if notice of the meeting had been duly given to all **directors**.
- 65.4 Decisions of and resolutions of the board, as well as acts done pursuant to them, will not be invalidated by reason only of any procedural failure or defect in the calling or convening of a meeting including in the giving of due notice of meeting.

### 66. Chairperson for board meetings

- 66.1 The **elected chairperson** shall, if present, preside as chairperson of every **board** meeting.
- 66.2 If the **elected chairperson** is:
- (a) not present within thirty (30) minutes after the starting time set for the meeting; or
  - (b) present but is unable or unwilling to act as chairperson of the meeting;

the **directors** at a **board** meeting may choose a **director** to be the chairperson for that meeting by two-thirds majority, or if their number is not three or a multiple of three, then the nearest number of two-thirds.

#### 67. Quorum at board meetings

- 67.1 Unless the **board** determines otherwise, the quorum for a **board** meeting is a majority (more than 50%) of **directors** being personally present (or in conference in accordance with clause 68).
- 67.2 A quorum must be present for the whole **board** meeting.
- 67.3 A **director** who is disqualified from voting on a matter pursuant to clause 63 shall be counted in the quorum despite that disqualification.

#### 68. Using technology to hold board meetings

- 68.1 The **board** may hold its meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the **directors**.
- 68.2 The **board's** agreement may be a standing (ongoing) one.
- 68.3 A **director** may only withdraw their consent within a reasonable period before the meeting.
- 68.4 The particular technology used to convene or hold a **board** meeting, pursuant to clause 68.1, must be reasonably available and accessible to all **directors** who wish to attend the **board** meeting.

#### 69. Passing board resolutions

- 69.1 A **directors'** resolution must be passed by a majority of the votes cast by **directors** present and entitled to vote on the resolution. A resolution passed by a majority of the votes cast by the **directors** will for all purposes be taken to be a determination of the **board**.
- 69.2 Each **director** shall have one (1) vote.
- 69.3 In case of an equality of votes at a meeting of the **board**, the chairperson will not have a casting vote, and the resolution will not be passed.

#### 70. Circular resolutions of the board

- 70.1 The **board** may pass a circular resolution without a **board** meeting being held.
- 70.2 A circular resolution is passed if 75% or more of the **directors** (excluding any director disqualified from voting on the resolution under clause 6.3) entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 70.3 or clause 70.4.
- 70.3 Each **director** may sign:
  - (a) a single document setting out the resolution and containing a statement that they agree to the resolution; or



- (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 70.4 The **company** may send a circular resolution by electronic means to the **directors** and the **directors** may agree to the resolution by sending a responding email to that effect. Directors should provide to the company secretary an original or scanned copy of their signature agreeing to the circular resolution as soon as practicable thereafter for corporate secretarial purposes.

## Secretary

### 71. Appointment and role of secretary

- 71.1 The **company** must have at least one **secretary**, who may also be a **director**, or an employee of the **company** or any other person as they may select .
- 71.2 A **secretary** must be appointed by the **board** (after giving the **company** their signed consent to act as **secretary** of the **company**) and may be removed by the **board**.
- 71.3 The company will determine the terms and conditions under which the **secretary** is appointed, including any remuneration.
- 71.4 The role of the **secretary** includes:
  - (a) maintaining a **register** of the **company's members**;
  - (b) maintaining the minutes and other records of **general meetings** (including notices of meetings), **board** meetings and circular resolutions; and
  - (c) such other functions as a company secretary is required to perform under the Corporations Act and under the terms and conditions of the job description referable to their appointment.
- 71.5 For the sake of clarity, the position of **secretary** is not an office bearer position on the **board**.

## Validation of Acts of Directors

### 72. Acts of Directors

- 72.1 All acts done:
  - (a) at any meeting of the **board**; or
  - (b) by any person acting as a **director**,shall, even if it is discovered afterwards that there was a defect in the appointment or continuance in office of any such **director** or person or that they or any of them were disqualified or were not entitled to vote, be as valid as if every such person had been duly appointed or had continued in office and was duly qualified to be a **director** and had been entitled to vote.

## Minutes and records

### 73. Minutes and records

- 73.1 The **company** must, within one (1) month, make and keep the following records in such manner as is required by section 251A of the **Corporations Act** (notwithstanding the potential application of section 111L of the **Corporations Act**) for the purposes of recording:
- (a) minutes of proceedings and resolutions of **general meetings**;
  - (b) minutes of circular resolutions of **members**;
  - (c) a copy of a notice of each **general meeting**; and
  - (d) a copy of a **members'** statement distributed to **members** under clause 34.
- 73.2 The **company** must, within one (1) month, make and keep the following records in such manner as is required by section 251A of the **Corporations Act** (notwithstanding the potential application of section 111L of the **Corporations Act**) for the purposes of recording:
- (a) the names of the **directors** present at each meeting of the **board** and of **directors** present at each meeting of any committees;
  - (b) minutes of proceedings and resolutions of **board** meetings (including meetings of any committees); and
  - (c) minutes of circular resolutions of the **board**.
- 73.3 The **company** must cause minutes to be kept in accordance with the **Corporations Act** (notwithstanding the potential application of section 111L of the **Corporations Act**), for the purposes of recording:
- (a) the names of the **directors** present at each meeting of the **board** and of **directors** present at each meeting of any **committee**;
  - (b) all orders, resolutions and proceedings of general meetings and of meetings of the **board** and of **committees**; and
  - (c) such matters as are required by the **ACNC Act** or the **ACNC Regulation** to be recorded in the record books of the **company** including, without limitation, all declarations made or notices given by any **director** of his or her interest in any contract or proposed contract or the holding of any office or property whereby any conflict of duty or interest may arise.
- 73.4 To allow **members** to inspect the **company's** records:
- (a) the **company** must give a **member** access to the records set out in clause 73.1; and
  - (b) the **board, subject to prudential conditions determined by the board**, may authorise a **member** to inspect other records of the **company**, including records referred to in clause 73.2 and clause 74.1 provided that the board is satisfied as to the bona fides of the reason for the inspection in it being in good faith in the best interests of the company and not for an ulterior purpose, that the confidentiality of the records inspected is appropriately maintained and that no breach of privacy laws will be offended thereby.

- 73.5 The **board** must ensure that minutes of a **general meeting** or a **board** meeting are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting; or
  - (b) the chairperson of the next meeting.
- 73.6 The **board** must ensure that minutes of the passing of a circular resolution (of **members** or **directors**) are signed by a **director** within a reasonable time after the resolution is passed.

#### 74. Financial and related records

- 74.1 The **company** must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance; and
  - (b) enable true and fair financial statements to be prepared and to be audited or reviewed by a properly qualified auditor or other entity authorised by the **Corporations Act** or **ACNC Act**, as the case may be.
- 74.2 The **company** must also keep written records that correctly record its operations.
- 74.3 The **company** must retain its records for at least seven (7) years.
- 74.4 The **board** must take reasonable steps to ensure that the **company's** records are kept safe.
- 74.5 The **board** shall cause proper financial records to be kept and must, if required by the **Corporations Act** or the **ACNC Act** or the **ACNC Regulation**, prepare and distribute copies of the financial reports of the **company** and a **directors' report**.

## Notice

#### 75. What is notice

- 75.1 Anything written to or from the **company** under any clause in this **constitution** is written notice and is subject to clauses 76 to 78, unless specified otherwise.
- 75.2 Clauses 76 to 78 do not apply to a notice of proxy under clause 42.1(b).

#### 76. Notice to the company

- 76.1 Written notice or any communication under this **constitution** may be given to the company, the **board** or the **secretary** by:
- (a) delivering it to the **office**;
  - (b) posting it to the **office** or to another address chosen by the **company** for notice to be provided; or
  - (c) sending it to an email address or other electronic address notified by the **company** to the **members** as the **company's** email address or other electronic address.

#### 77. Notice to members

- 77.1 Written notice or any communication under this **constitution** may be given to a **member**:
- (a) in person;
  - (b) by posting it to, or leaving it at the address of the **member** in the **register** or an alternative address (if any) nominated by the **member** for service of notices;
  - (c) sending it to the email or other electronic address nominated by the **member** as an alternative address for service of notices (if any);
  - (d) sending it by facsimile to the facsimile number nominated by the **member** as an alternative address for service of notices (if any); or
  - (e) if agreed to by the **member**, by notifying the **member** at an email or other electronic address nominated by the **member**, that the notice is available at a specified place or address (including an electronic address).
- 77.2 If the **company** does not have an address for the **member**, the **company** is not required to give notice in person.

## 78. When notice is taken to be given

- 78.1 A notice:
- (a) delivered in person, or left at a the recipient's address, is taken to be given on the day it is delivered;
  - (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs;
  - (c) sent by electronic means, is taken to be given on the business day after it is sent; and
  - (d) given under clause 77.1(e) is taken to be given on the business day after the notification that the notice is available is sent.
- 78.2 A notice may be given by the company to the persons entitled to a share in consequence of the death, mental incapacity or bankruptcy of a **member** by:
- (a) service on the **member** personally;
  - (b) sending it by post addressed to the person by name or by the title of the representative of the deceased or the representative of the person with mental incapacity or the assignee of the bankrupt or by any like description at the address, if any, supplied for the purpose by the person claiming to be entitled; or
  - (c) by giving the notice in any manner in which the same might have been given if the death, mental incapacity or bankruptcy had not occurred.
- 78.3 Evidence of service of a notice may be established by proving that the envelope containing the notice and stamped appropriately was properly posted and a certificate given by any **officer** of the company to that effect shall be conclusive evidence of service.

## Financial year

### 79. Company's financial year

The **company's** financial year is from 1 July to the next succeeding 30 June unless the **board** passes a resolution to change the financial year.

## Indemnity, insurance and access

### 80. Indemnity

- 80.1 Subject to clause 80.2, the **company** indemnifies each **officer** (or former **officer**) of the **company** out of the assets of the **company**, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an **officer** or an employee (or former **officer** or employee) of the **company**.
- 80.2 No such **officer** (or former **officer**) shall be indemnified out of the funds of the **company** under this clause 80 where:
- (a) it is in respect of a liability to another person (other than the **company**) where the liability to the other person arises out of conduct involving a wilful breach of duty or lack of good faith, including but not limited to the obligations of the **officer** or former **officer** under the **Corporations Act**, the **ACNC Act**, the **ACNC Regulations**; or
  - (b) it is in respect of a liability for costs and expenses incurred:
    - (i) in defending proceedings, whether civil or criminal, in which the **officer** (or former **officer**) is found guilty; or
    - (ii) in connection with an application, in relation to such proceedings, in which the court does not grant relief to the **officer** (or former **officer**) under the **Corporations Act**.
- 80.3 In this clause, 'to the relevant extent' means:
- (a) to the extent that the **company** is not precluded by law (including the **Corporations Act**) from doing so; and
  - (b) for the amount that the **officer** is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 80.4 The indemnity is a continuing obligation and is enforceable by an **officer** even though that person is no longer an **officer** of the **company**.

### 81. Insurance

- 81.1 To the extent permitted by law (including the **Corporations Act**), and if the **board** considers it appropriate, the **company** may pay or agree to pay a premium for a contract insuring a person who is or has been an **officer** of the **company** against any liability incurred by the person as an **officer** of the **company** (whether in

respect of acts or omissions prior to or after the date of the issue of the policy or both) except for:

- (a) a liability arising out of conduct involving a wilful breach of duty in relation to the **company**; or
- (b) a contravention of the duties set out in subsection 45.25(2)(c) and (d) of the **ACNC Regulation** (or equivalent sections in the **Corporations Act**).

81.2 The **board** shall have the discretion to approve the terms and conditions of any such policy of insurance.

81.3 Where an **officer** (or former **officer**) has the benefit of an indemnity pursuant to an insurance policy in respect of his actions or omissions then the **company** shall not be required to indemnify the **officer** under clause 80 except to the extent that the indemnity affected by the insurance policy does not fully cover the person's liability.

## 82. Indemnity to Continue

The indemnity granted by the **company** contained in clauses 80 and 81 shall continue in full force and effect notwithstanding the deletion or modification of that clause, in respect of acts and omissions occurring prior to the date of the deletion or modification.

# Winding up

## 83. Surplus assets not to be distributed to members

If the **company** is wound up, any **surplus assets** must not be distributed to a **member** or a former **member** of the **company**, **unless that member is a qualifying organisation for the purpose of clause 84.**

## 84. Distribution of surplus assets

84.1 Subject to the **Corporations Act** and any other applicable Act, and any court order, if the **company is wound up, its surplus assets will be dealt with as follows**

(a) if its endorsement as a **DGR** is also revoked, then any surplus assets meeting the following descriptions which are being discretely held by the Company in specifically identifiable discrete accounts of the Company, shall be transferred to another DGR having objects similar to, or inclusive of, the purposes for which those surplus assets were held by the Company:

- (i) gifts of money or property for the principal purpose of the **company**;
- (ii) contributions made in relation to an eligible fundraising event held for the principal purpose of the **company**; or
- (iii) money received by the **company** because of such gifts and contributions;

- (b) any other surplus assets which are not referred to in clause 84.1(a) may be distributed to one or more organisations:
- (i) with objects similar to, or inclusive of, the purpose(s) in clause 6;
  - (ii) with a constitution which requires its income and property to be applied in promoting its objects; and
  - (iii) with a constitution which prohibits the distribution of any income and property amongst its members to at least the same extent as the company by clause 8.
- 84.2 The decision as to the organisation(s) to be given the **surplus assets** must be made by a **special resolution of members** at or before the time of winding up. If the **members** do not make this decision, the **company** may apply to the Supreme Court of Western Australia to make this decision.

## Definitions and interpretation

### 85. Definitions

In this **constitution**:

**ACNC** means the Australian Charities and Not-for-Profits Commission.

**ACNC Act** means the Australian Charities and Not-for-profits Commission Act 2012 (Cth).

**ACNC Regulation** means whichever of the Australian Charities and Not-for-profits Commission Amendment Regulation 2013 (Cth) or any amended version of that regulation which is in force from time to time.

**annual general meeting** means an the meeting held pursuant to clause 23.

**board** means the board of **directors** of the **company**.

**company** means the **company** referred to in clause 1.

**constitution** means this constitution as amended or supplemented from time to time.

**Corporations Act** means the **Corporations Act 2001** (Cth).

**DGR** means an organisation that holds current accreditation as a deductible gift recipient entity as defined by Australian taxation law.

**director** means any person holding the position of a **director** of the **company** and **directors** means the **directors** for the time being of the **company**.

**elected chairperson** means a person elected by the **directors** to be the **company's** chairperson under clause 50.

**entrance fee** means the entrance fee payable by **members** pursuant to clause 13.

**general meeting** means a meeting of **members** and includes the **annual general meeting**, under clause 23.1.

**member** means a **member** of the **company** pursuant to clause 9 and clause 11 and **membership** has the corresponding meaning.

**member present** means, in connection with a **general meeting**, a **member** present in person, by attorney or by proxy at the venue or venues for the meeting

**objects** means the objects of the **company** as set out in clause 6.

**office** means the registered office for the time being of the **company**.

**officer** has the same meaning as given to that term in section 9 of the **Corporations Act**.

**register** means the register of **members** to be kept pursuant to the **Corporations Act**.

**registered charity** means a charity that is registered under the **ACNC Act**.

**Replaceable Rules** means the replaceable rules applicable to a public company limited by guarantee set out in the **Corporations Act**.

**secretary** means the person appointed as the **secretary** of the **company** and includes any assistant or acting **secretary**.

**special resolution** means a resolution:

- (a) of which notice has been given under clause 24.5(c); and
- (b) that has been passed by at least 75% of the votes cast by **members present** and entitled to vote on the resolution.

**subscription** means the subscription fees payable by **members** pursuant to clause 13.

**surplus assets** means any assets of the **company** that remain after paying all debts and other liabilities of the **company**, including the costs of winding up.

## 86. Reading this constitution with the Corporations Act

- 86.1 The **replaceable rules** set out in the **Corporations Act** do not apply to the **company** to the extent that they are inconsistent with this constitution (and notwithstanding the potential applicability of section 111L of the Corporations Act).
- 86.2 While the **company** is a **registered charity**, the **ACNC Act** and the **Corporations Act** override any clauses in this **constitution** which are inconsistent with those Acts.
- 86.3 If the **company** is not registered as charity with the ACNC (even if it remains a charity), the **Corporations Act** overrides any clause in this **constitution** which is inconsistent with that Act.



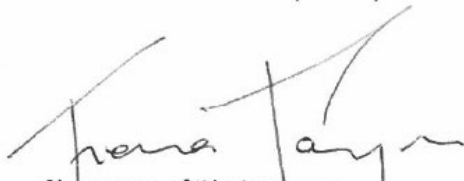
86.4 A word or expression that is defined in the **Corporations Act**, or used in that Act and covering the same subject, has the same meaning as in this **constitution**.


## 87. Interpretation

In this **constitution**:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression; and
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).

I, FIONA PAYNE ~~Richardson~~, as chairperson of the company at the time this constitution was adopted by the members, hereby agree to the foregoing constitution: 31/3/21.

  
Signature of Chairperson

  
Signature of Witness

FIONA PAYNE  
Name of Chairperson  
(Please print)

Jocelyn W. Payne  
Name of Witness  
(Please print)

Date: 31.3.21.

Date: 31.3.21.